

## **REMARKS**

### **Summary of the Official Action**

The foregoing amendment and remarks that follow are responsive to the Office Action mailed March 10, 2006. In that Office Action, the Examiner objected to Claim 16 because of an informality. Furthermore, the Examiner rejected Claims 12 and 13 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-4 and 6-9 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,850,511 issued to Kral (KRAL) – incorrectly identified in the Office Action as U.S. Patent No. 5,921,408 issued to Groenewold et al. (GROENEWOLD) but later confirmed as being KRAL in a voicemail from Examiner Pollicoff to Applicant's representative on June 6, 2006.

Additionally, Claims 1-9, 11, 14 and 16-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over GROENEWOLD in view of KRAL. Claims 10, 12, 13 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over GROENEWOLD in view of KRAL and further in view of U.S. Patent No. 4,024,590 issued to Wendt (WENDT). Finally, Claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over GROENEWOLD in view of KRAL and further in view of U.S. Patent No. 5,850,784 issued to Conner (CONNER).

### **Summary of Applicants Response**

Applicant has amended independent Claims 1 and 16 and dependent Claim 12 in order to clarify the invention and incorporate subject matter which is believed to be allowable over the

relevant prior art references cited thereagainst. Additionally, Claim 16 has been amended to correct the informality. Claim 12 has been amended to overcome the rejection under 35 U.S.C. 112, second paragraph, for improper antecedent basis. The proposed amendments are not believed to add new matter nor necessitate further searching.

#### **Objection to Claim 16**

Claim 16 has been amended to correct a typographical error wherein the phrase “side-be-side” has been replaced with the phrase “side-by-side,” such that the objection is now believed to be overcome

#### **Rejection of Claims 12 and 13 under 35 U.S.C. 112, second paragraph**

Claim 12 was rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner indicates that Claim 12 refers to “the elongate groove”, a limitation not disclosed in Claim 9 from which Claim 12 depends such that the limitation lacks proper antecedent basis. Claim 13 was rejected for depending on Claim 12.

By this amendment, Applicant has amended Claim 12 to depend from Claim 10 such that antecedent basis is now proper and the rejection under 35 U.S.C. 112, second paragraph, is now believed to be overcome.

#### **The Present Invention as Recited in Amended Independent Claims 1 and 16**

As recited in independent Claim 1 as amended, the present invention is directed to a cutlery

dispenser system for dispensing cutlery utensils wherein each of the cutlery utensils has an elongate handle. The cutler dispenser system comprises a bin and a cartridge that is removably insertable into the bin. The cartridge has a bin front with at least one vertical slot extending substantially along a height of the cartridge. The vertical slot opens to a cartridge top and a cartridge side. In this manner, the vertical slot of the cartridge is specifically configured to contain a stack of utensils such that the handles thereof protrude laterally beyond the cartridge side. The vertical slot is configured such that at least one of the utensils may be removed by upward movement of the utensil beyond the cartridge slot.

As recited in independent Claim 16 as amended, the cutlery dispenser system may additionally include a support rack for removably mounting the bin thereto. The cartridge is removably insertable into the bin through the bin front and has at least three vertical slots disposed in side-by-side arrangement. Each of the vertical slots extends substantially along a height of the cartridge such that the vertical slots open to a cartridge top and a cartridge side. Each of the vertical slots is configured to contain a stack of the utensils such that the handles thereof protrude beyond the cartridge side. Each of the vertical slots is also configured such that at least one of the utensils in a respective one of the stacks may be removed from the cartridge by upward movement of the utensil beyond the cartridge top.

**Rejection of Independent Claim 1 Under 35 U.S.C. 102(b)**

*In the Office Action, the Examiner rejected Claims 1-4 and 6-9 under 35 U.S.C. 102(b) as being anticipated by KRAL.*

The Examiner indicates that as to Claims 1, 2 and 6-9, KRAL discloses a dispenser system

comprising a bin (Kral Figure 2, reference number 10) having an open bin front (Fig. 2), a cartridge (reference number 18b and 18c) being removably insertable into the bin front and having at least one vertical slot (see semi-circular notch above opening 24) opening to a cartridge top (reference number 24) and a cartridge side (reference number 74). (Office Action, Page 3).

As understood, KRAL discloses a display rack for dispensing packaged items from a vertical stack of items contained within magazines. The magazines are interchangeably received and retained by columns formed in a housing. The leading item in a vertical stack may be discharged through a discharge outlet formed in the magazine. In this manner, the leading item is withdrawn through the discharge opening of the housing such as by a clerk or a purchaser. Importantly, KRAL is understood to allow removal of an item from the vertical stack using positive gravity feed of the magazine.

Applicant wishes to emphasize that KRAL is understood to disclose that the display rack utilizes the force of gravity in order to allow for removal of the leading item in a vertical stack. More specifically, KRAL indicated that “the housing 12 receives and retains magazines containing a vertical stack of packaged items 20 therein. As a result of the *positive gravity feed* of magazine 18, the leading item 22 and vertical stack 20 may be discharged...” (Col. 4, lns. 37-43).

KRAL necessarily utilizes gravity such that items such as utensils “may be withdrawn through discharge opening 26 of housing 12 which is aligned with discharge outlet 24 of the magazine.” (Figures 1 and 2; Col. 9, lns. 31-32).

In contrast, the present application discloses a cutlery dispenser system wherein the vertical slots “are configured such that at least one of the utensils may be removed by *upward movement thereof* beyond the cartridge top” as recited in amended Claims 1 and 16. More specifically, as can

be seen in Figures 2, 3, 6, 8 and 10, the vertical slot formed in the cartridge is closed on the bottom and open at the top such that only the uppermost one of the utensils may be removed by drawing the utensil upwardly beyond the cartridge top. As such, Applicant respectfully submits that KRAL is silent with regard to teaching a cutlery dispenser system wherein the vertical slots are configured such that utensils may be removed by upward movement. More specifically, nowhere in KRAL is there disclosed either in the drawings or the specification that the cutlery dispenser system thereof allows for removal of the utensils by upward movement (recited in amended Claims 1 and 16 of the application). Therefore, Applicant submits that KRAL teaches away from the cutlery dispenser system disclosed in Applicant's invention.

Furthermore, the cutlery dispenser system of KRAL fails to disclose that the cartridges have vertical slots "extending continuously upwardly and opening to a cartridge top and cartridge side" as recited in amended independent Claims 1 and 16. In contrast, the semi-circular notch formed above discharge outlet 24 through which the utensils are withdrawn, is neither the structural or functional equivalent of the vertical slots disclosed in Applicant's invention. More specifically, the vertical slots 48 shown in Figures 1-10 of Applicant's invention "extend continuously upwardly" along the cartridge. Furthermore, the vertical slots 48 of Applicant's invention are open to the cartridge side along a continuous length thereof. Even further, in contrast the cutlery dispenser system disclosed in KRAL, Applicant's cartridge includes the vertical slot being continuously open to the cartridge side along a length thereof to enable removal of one of the utensils by upward movement of the handle thereof extending out of the cartridge side.

Applicant respectfully submits that KRAL is silent with regard to teaching a cutlery dispenser system wherein the vertical slots in the cartridge "extend continuously upwardly and

open to a cartridge top and a cartridge side.” Furthermore, nowhere in KRAL is there disclosed either in the drawings or the specification that the handles of the stack of utensils protrude laterally beyond the cartridge side.

Therefore, Applicant respectfully submits that KRAL teaches away from the cutlery dispenser system disclosed in Applicant’s invention. As such, amended independent Claims 1 and 16 of the application are believed to distinguish over KRAL such that the §102(b) rejection advanced by the Examiner in relation thereto should be withdrawn. As such, amended independent Claims 1 and 16 are now believed to be in condition for allowance. Likewise, all claims depending therefrom, namely dependent Claims 2-15 and 17-21 are also believed to be in condition for allowance.

**Rejection of Independent Claims 1 and 16 Under 35 U.S.C. 103(a)**

*Independent Claims 1 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al. in view of Kral.*

In the Office Action, the Examiner indicates that GROENEWOLD discloses “a cutlery dispenser system where a vertical slot opens to a cartridge top (Figure 2, reference number 22) and a cartridge side (reference number 16) [which] is configured to contain a stack of the utensils such that the handles thereof protrude laterally beyond the cartridge side (Groenewold, Figures 10 and 7).” The Examiner indicates that “the vertical slot is configured such that at least one of the utensils may be removed by upward movement beyond the cartridge top (Figure 2).” (Office Action, Page 4).

The Examiner indicates that while “GROENEWOLD does not disclose a dispenser system

having a bin and cartridge removably insertable into the bin, KRAL discloses a dispenser system comprising a bin having an open bin front and a cartridge removably insertable into the bin through the bin front.” The Examiner indicates that it would have been obvious to one of ordinary skill in the art at a time of the invention to modify the cartridge of GROENEWOLD to be included in a bin as taught by KRAL for providing a display rack that is simple and easy to use for both the consumer and vendor (Col. 2, lns. 20-22). (Office Action, Pages 4-5). With respect to Claim 16, the Examiner indicates that GROENEWOLD discloses that the cartridge has at least three vertical slots disposed in side-by-side arrangement (Groenewold, Figure 1) for different kitchen utensils (i.e., forks, knives, spoons). (Office Action, Page 6).

#### **Establishing a *Prima Facie* Case of Obviousness**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S. P.Q.2d (BNA) 1438. Sources that may be used to provide a motivation to combine references include the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58.

Applicant respectfully submits that a *prima facie* case of obviousness has not been established based on the cited references. As is discussed in detail below, all of the pending claims are believed to be allowable. Reconsideration and withdrawal of the 103 rejections is respectfully requested.

**No Motivation to Combine Prior Art References - Traversal of Rejection of Claims 1 and 16**

Claims 1 and 16 are believed to be allowable because there is no motivation to combine GROENEWOLD with KRAL. GROENEWOLD is understood to disclose a flatware dispensing unit for dispensing flatware. GROENEWOLD discloses a dispensing unit having a main housing with a removable top. (Figure 1; Col. 4, lns. 18-19). The housing includes a compartmented portion 28 and a secondary housing portion 30. The compartmented section has four compartments with two being provided for spoons and the others being provided for forks. (Col. 4, lns. 22-26). The compartmented section 28 includes compartments 32-35 which are positioned adjacent one another and separated by partitions.

Each compartment has an elongated slot with a widened portion or transverse slot 40 provided at a top of each of the compartment which permits the bowl portion of a spoon, the tines of a fork or the blade of a knife to pass therethrough. (Col. 4, lns. 36-42). The removable top allows for a cartridge of spoons, forks or knives to be dropped into the compartment. (Col. 4, lns. 47-50). The flatware may be removed from the dispensing unit by lifting to a position adjacent the widened section such that the bowl portion of the spoon or the tine portion of the fork can be removed by pulling the spoon or fork outwardly. Utensils cannot be removed until an uppermost utensil is removed and then only one utensil can be removed at a time. (Col. 5, lns. 6-13).

Applicant submits that there is no motivation to combine GROENEWOLD with KRAL as



submitted by the Examiner. More specifically, GROENEWOLD discloses that “the flatware 54...[is] contained within a cartridge 60.” (Col. 5, lns. 15-17). GROENEWOLD further discloses that the “cartridge 60 is...of a rectangular configuration such that it can be readily received within any one of the compartments 32-35.” (Col. 5, lns. 20-22). Furthermore, the cartridge includes side wall 72 having a complementary elongated slot 76 formed therein. An upper end of the slot has a widened section 78 which aligns with the widened portion formed in the compartment. The handle portion of the flatware contained within the cartridge extends through the elongated slot formed in the side wall. (Col. 5, lns. 25-37). GROENEWOLD allows for removal of utensils from the cartridge by lifting upwardly until the spoon portion or tine portion can be drawn outwardly through the widened portion 78 of the cartridge and the widened portion 40 of the compartment. (Col. 5, lns. 41-46).

In this regard, GROENEWOLD is understood to disclose a flatware dispensing unit 10 as shown in Figure 1 wherein a main housing 12 (the functional equivalent of Applicant’s bin) is configured to allow for removable insertion of at least one cartridge 60 (the functional equivalent of Applicant’s cartridge) with each cartridge having a vertical slot opening to a cartridge top. As such, Applicant submits there is no suggestion or motivation to combine the bin of KRAL with the cutlery dispenser of GROENEWOLD because **GROENEWOLD already possesses the functional equivalent of a bin and a cartridge.** As such, Applicant submits that it would not have been obvious to one of ordinary skill in the art at the time of the invention to modify the cartridge of GROENEWOLD to be included in a bin as taught by KRAL for the purpose of providing a display rack.

With regard to Claim 16, Applicant respectfully submits that it would not have been

obvious to combine a cartridge having three vertical slots disposed in side-by-side arrangement with the bin of KRAL because **GROENEWOLD already discloses the functional equivalent of a bin within which the cartridges are insertable**. Therefore, the Examiner's combination of the flatware dispensing system of GROENEWOLD with the display rack of KRAL is impermissible. Furthermore, Applicant submits that Claims 1 and 16 are distinguished from the flatware dispensing system of GROENEWOLD because GROENEWOLD does not appear to disclose "a cartridge that is removably insertable into the bin *through the bin front*" as recited in amended independent Claims 1 and 16. Rather, the cartridge 60 of GROENEWOLD is shown in Figures 1-12 and described as "easily dropped into the respective compartment" (Col. 4, lns. 48-50) by using the "removable top 22 of the compartmented section 28" (Col. 4, lns. 48-49).

Because of Applicant's belief in a lack of any suggestion or motivation to combine GROENEWOLD with KRAL to arrive at Applicant's invention, the Examiner's rejection of independent Claims of 1 and 16 under 35 U.S.C. 103(a) is believed to be overcome. Because amended independent Claims 1 and 16 are believed to be allowable, all claims depending therefrom, namely, Claims 2-15 and 17-21 are also believed to be allowable.

### **Conclusion**

In view of the foregoing, the application is believed to be in condition for allowance. Entry of the amendments and issuance of a Notice of Allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the application, please contact Applicant's representative at the telephone number listed below.

If any additional fee is due, please charge deposit account 19-4330.

Respectfully submitted,

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